

Filed for intro on 02/01/95  
House Bill \_\_\_\_\_  
By \_\_\_\_\_

Senate Bill No.SB0226  
By Rice

AN ACT to amend Tennessee Code Annotated, Title 7, Chapter 51, relative to adult-oriented establishments.

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

WHEREAS, many adult-oriented establishments exist where enclosed booths, stalls or cubicles and entertainment are provided to persons for a fee for the purpose of viewing adult entertainment; and

WHEREAS, studies performed in a substantial number of communities around the country indicate that such closed booths, stalls or cubicles have been used by patrons, clients or customers of such adult-oriented establishments for the purpose of engaging anonymously in sexual acts which cause blood, semen, urine or excrement to be deposited on the floors and or walls of such enclosures; and

WHEREAS, these studies also found that closed booth activities are likely to foster a pattern of conduct inimical to the public health; that enclosed booths encourage illegal and unsanitary sexual activity; and per se present a health risk; and

WHEREAS, the health risks include the possible unchecked spread of the AIDS virus, hepatitis-B virus and other sexually transmitted diseases because tracking of potentially infected parties is not possible given the anonymity of the sexual encounter; and

WHEREAS, there is substantial governmental interest in curbing the spread of AIDS, as well as other sexually transmitted communicable diseases; and

WHEREAS, it is further in the public interest for a limitation to be placed on the hours of operation these establishments may be open for business; now, therefore,

BE IT ENACTED BY THE GENERAL ASSEMBLY OF THE STATE OF TENNESSEE:

SECTION 1. Tennessee Code Annotated, Title 7, Chapter 51, is amended by adding Sections 2 through 6 of this act as a new, appropriately designated part.

SECTION 2. As used in this part, unless the context otherwise requires:

(1) "Adult" means a person who has attained the age of eighteen (18);

(2) "Adult cabaret" means a cabaret which features topless dancers, go-go dancers, exotic dancers, strippers, male or female impersonators, or similar entertainers;

(3) "Adult entertainment" means any exhibition of any adult-oriented motion picture, live performance, display or dance of any type, which has as a significant or substantial portion of such performance, any actual or simulated performance of specified sexual activities, including removal of articles of clothing or appearing unclothed;

(4) "Adult-oriented establishment" means any commercial establishment, business or service, or portion thereof, which offers sexually oriented material, devices, or paraphernalia or specific sexual activities, services, or performances or any combination or form thereof, whether printed, filmed, recorded or live. The term "adult-oriented establishment" includes but is not limited to such activities:

(A) "Adult book stores" means any corporation, partnership or business of any kind which has as part of its stock books, magazines or other periodicals and which offers, sells, provides or rents for a fee:

(i) Any sexually-oriented material, and which business restricts or purports to restrict admission to adults or to any class of adults; or

(ii) Any sexually-oriented material which is available for viewing by patrons on the premises by means of the operation of movie machines or slide projectors; or

(iii) Any sexually-oriented material which has a substantial portion of its contents devoted to the pictorial depiction of sadism, masochism or bestiality; or

(iv) Any sexually-oriented material which has as its principal theme the depiction of sexual activity by, or lascivious exhibition of, the uncovered genitals, pubic region or buttocks of children who are or appear to be under the age of eighteen (18);

(B) "Adult shows" or "adult peep shows" includes all adult shows, exhibitions, performances or presentations which contain acts or depictions of specific sexual activities;

(C) "Adult motion picture theatres" means an enclosed building used for presenting film presentations which are distinguished or characterized by an emphasis on matter depicting, describing or relating to specific sexual activities for observation by patrons therein;

(5) "Bestiality" means sexual activity, actual or simulated, between a human being and an animal;

(6) "Masochism" means sexual gratification achieved by a person through, or the association of sexual activity with, submission or subjection to physical pain, suffering, humiliation, torture or death;

(7) "Person" means an individual, partnership, limited partnership, firm, corporation or association;

(8) "Sadism" means sexual gratification achieved through, or the association of sexual activity with, the infliction of physical pain, suffering, humiliation, torture or death upon another person or animal.

(9) "Specified sexual activities" means and includes the following sexual activities and/or the exhibition of the following anatomical areas:

(A) Human genitals in a state of sexual stimulation or arousal;

(B) Acts of human masturbation, sexual intercourse, sodomy, cunnilingus, fellatio or any excretory function, or representation thereof; or

(C) Fondling or erotic touching of human genitals, pubic region, buttocks or female breasts; or

(D) Less than completely opaquely covered:

(i) Human genitals, pubic region;

(ii) Buttocks;

(iii) Female breasts below the top of the areola; or

(iv) Human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(10) "Sexually-oriented material" means any book, article, magazine, publication or written matter of any kind, drawing, etching, painting, photograph, motion picture film or sound recording, which depicts sexual activity, actual or simulated, involving human beings or human beings and animals, or which exhibits uncovered

human genitals or pubic region in a lewd or lascivious manner or which exhibits human male genitals in a discernibly turgid state, even if completely covered.

SECTION 3. (a) No adult-oriented establishment shall open to do business before ten o'clock a.m. (10:00 a.m.), Monday through Saturday; and no such establishment shall remain open after ten o'clock p.m. (10:00 p.m.), Monday through Saturday. No adult-oriented establishment shall be open for business on any Sunday or a legal holiday as designated in Tennessee Code Annotated, Section 15-1-101.

(b) A local ordinance, resolution or private act may establish opening hours for adult-oriented establishments which are later than ten o'clock a.m. (10:00 a.m.) and closing hours which are earlier than ten o'clock p.m. (10:00 p.m.), but in no event may such ordinances, resolutions or private acts extend the opening hours to earlier than ten o'clock a.m. (10:00 a.m.) or the closing hours to later than ten o'clock p.m. (10:00 p.m.).

SECTION 4. No person shall own, operate, manage, rent, lease or exercise control over any commercial building, structure, premises or portion or part thereof, which is an adult-oriented establishment and which contains:

(1) partitions between subdivisions of a room, portion or part of a building, structure or premises having an aperture which is designed or constructed to facilitate sexual activity between persons on either side of the partition; or

(2) booths, stalls, or partitioned portions of a room or individual rooms, used for the viewing of motion pictures or other forms of entertainment, having doors, curtains or portal partitions, unless such booths, stalls, partitioned portions of a room or individual rooms so used shall have at least one side open to adjacent public rooms so that the area inside is visible to persons in adjacent public rooms. Such areas shall be lighted in a manner that the persons in the areas used for viewing motion pictures or other forms of entertainment are visible from the adjacent public rooms, but such lighting shall not be

of such intensity as to prevent the viewing of motion pictures or other offered entertainment.

SECTION 5. (a) Any person, partnership or corporation who is found to have violated this part shall be penalized a definite sum not exceeding fifty dollars (\$50.00) , and such violation shall result in the suspension or revocation of any required license. The provisions of this part shall be enforced by the health department of the county or municipality where such adult-oriented establishment is located unless a local ordinance, resolution or private act establishes or designates a board or authority to enforce such ordinance, resolution or private act.

(b) Each violation and each hour the violation continues shall be considered a separate violation.

SECTION 6. The opening and closing time limitations placed on adult-oriented establishments in Section 3 of this act shall not apply to an establishment which offers only live, stage adult entertainment in a theater, adult cabaret, or dinner show type setting, unless such establishment also offers at least one additional item, activity or service involving sexually-oriented material or specified sexual activity offered by an adult-oriented establishment.

SECTION 7. This act shall take effect July 1, 1995, the public welfare requiring it.